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HUMAN RIGHTS COMMITTEE
Fifty-sixth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

SPAIN

1. The Committee considered the fourth periodic report of Spain (CCPR/C/95/Add.1 and HRI/CORE/1/Add.2/Rev.2) at its 1479th, 1480th and 1481st meetings, on 20 and 21 March 1996 (see CCPR/C/SR.1479, 1480 and 1481). At its 1498th meeting, on 3 April 1996, the Committee adopted the following comments:

A. Introduction

2. The Committee thanks the State party for submitting, within the allotted time, a report which is in conformity with the Committee's guidelines and for engaging, through its highly qualified delegation, in a constructive dialogue. It notes with satisfaction that the information provided in the report and submitted orally by the delegation has given the Committee an appreciation of the manner in which Spain is acquitting itself of its obligation under the Covenant.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes with concern that terrorist groups continue to perpetrate bloody attacks which result in loss of human life and affect the application of the Covenant in Spain. It also notes the re-emergence of racist and xenophobic theories and behaviour.

C. Positive aspects

4. The Committee notes with satisfaction that Spain has come a long way in the promotion of and respect for human rights. In this connection it welcomes the accession of Spain, on 22 March 1991, to the Second Optional Protocol aiming at the abolition of the death penalty.

5. The Committee welcomes the fact that efforts have been made to disseminate human rights in schools as well as information on the report to the general public.

6. The Committee notes that the new law of 15 January 1996 concerning the status of minors should contribute to the application in Spain of the Convention on the Rights of the Child and the relevant provisions of the Covenant, particularly article 23.

7. The Committee welcomes the progress made by the State party in promoting equal opportunity for women in all sectors of public and professional life.

8. The Committee notes with satisfaction that the Penal Code drawn up in 1995 includes provisions establishing penalties for acts of racial discrimination and xenophobia.

9. Finally, the Committee notes that many decisions in the national courts refer to the Covenant as the legal basis, in conformity with articles 10 and 96 of the Constitution.

D. Principal subjects of concern

10. The Committee is concerned at the numerous reports it has received of ill-treatment and even torture inflicted on persons suspected of acts of terrorism by members of the security forces. It notes with concern, in that regard, that investigations are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released early, or simply do not serve the sentence. Moreover, those who perpetrate such deeds are seldom suspended from their functions for any length of time.

11. The Committee is concerned that proofs obtained under duress are not systematically rejected by courts.

12. The Committee expresses concern at the maintenance on a continuous basis of special legislation under which persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, may not have a lawyer of their own choosing and are judged by the Audiencia Nacional without possibility of appeal. The Committee emphasizes that these provisions are not in conformity with articles 9 and 14 of the Covenant. Again in regard to those two articles of the Covenant, the Committee notes with concern that the duration of pre-trial detention can continue for several years

and that the maximum duration of such detention is determined according to the applicable penalty.

13. With regard to the increase in the number of asylum-seekers, the Committee notes that anyone whose application for asylum or for refugee status is denied can be held for seven days prior to being expelled.

14. The Committee deplores the poor prison conditions that exist in most prisons, generally resulting from overcrowding, which deprives those detained of the rights guaranteed in article 10 of the Covenant.

15. Finally, the Committee is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of article 18 of the Covenant as pointed out in general comment No. 22 (48).

E. Suggestions and recommendations

16. The Committee invites the State party to take the necessary steps, including educational measures and information campaigns, to avert racist and xenophobic tendencies.

17. The Committee recommends that the State party establish transparent and equitable procedures for conducting independent investigations into complaints of ill-treatment and torture involving the security forces, and urges it to bring to court and prosecute officials who are found to have committed such deeds and to punish them appropriately. The Committee suggests that comprehensive human rights training should be provided to law-enforcement officials and prison personnel.

18. The Committee recommends that the legislative provisions, which state that persons accused of acts of terrorism or suspected of collaborating with such persons may not choose their lawyer, should be rescinded. It urges the State party to abandon the use of incommunicado detention and invites it to reduce the duration of pre-trial detention and to stop using duration of the applicable penalty as a criterion for determining the maximum duration of pre-trial detention.

19. The State party is strongly urged to institute a right of appeal against decisions of the Audiencia Nacional in order to meet the requirements of article 14, paragraph 5, of the Covenant.

20. The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces.